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ASH GROVE CEMENT COMPANY

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ORIGINAL

**PORT OF SEATTLE
TERM LEASE**

THIS TERM LEASE made as of March 20, 2006, by and between the PORT OF SEATTLE, a Washington municipal corporation, as Lessor, hereinafter referred to as "the Port," and ASH GROVE CEMENT COMPANY, a Delaware corporation, hereinafter referred to as "Lessee."

WITNESSETH:

In consideration of their mutual promises, the parties hereto do hereby mutually agree as follows:

1. LEASED PREMISES

The Port hereby leases to Lessee, and Lessee hereby hires and leases from the Port, the following described premises situated in King County, State of Washington:

Portions of Lots 4 through 7 and 43 through 46 of Calhoun, Denny and Ewing's replat of Block 388 of the plat of Seattle Tide Lands, in the south half of Section 18, Township 24 north, Range 4 east, W.M. in the City of Seattle, King County, Washington described as follows:

Beginning at the centerline intersection of vacated South Dakota Street and vacated Eighth Avenue South, thence south 00°00'00" east a distance of 160.00 feet; thence north 90°00'00" west a distance of 84.35 feet; thence south 74°25'42" west a distance of 8.98 feet to the true point of beginning; thence south 00°00'00" east a distance of 227.43 feet; thence north 90°00'00" west a distance of 234.43 feet; thence north 8°41'28" east a distance of 171.28 feet to the north line of Port of Seattle property; thence north 74°25'42" east along said property line, a distance of 216.49 feet to the true point of beginning.

Containing: 43,560 square feet (1.0 acre), being a portion of Port of Seattle's Terminal 106 West, as shown on Exhibit "A," attached hereto and by this reference made a part hereof, hereinafter called "the Premises."

The Port and Lessee agree that the Premises are and shall be deemed for all purposes to be 43,560 square feet.

2. TERM

This lease shall be for a term of five (5) years, beginning January 1, 2006 and ending December 31, 2010.

3. RENT

- a. Lessee agrees to pay as rent for the Premises the sum of SIX THOUSAND FORTY-TWO AND 50/100 DOLLARS (\$6,042.50) per month. The rent for each month shall be paid to the Port in advance on or before the first day of each and every month of the lease term, and shall be payable at such place as the Port may hereinafter designate. Except to the extent, if any, expressly provided below, payment of rent shall not relieve Lessee and/or cargo from their respective obligations to pay all applicable Port tariff charges.

Rent is computed as follows:

43,560 s.f. ground area @ \$1.6646/s.f./yr. = \$72,509.98 ÷ 12 = \$6,042.50/mo.*

*plus applicable taxes.

- b. The rent stated in subparagraph a. above shall be adjusted effective every twelfth (12th) month after the date hereof through the term of this lease, including any renewal term, by a percentage equal to the percentage increase for the previous twelve (12) month period in the Consumer Price Index for All Urban Consumers, U.S. City Average, all items, as published by the United States Department of Labor, Bureau of Labor Statistics, or at the Port's option for the Seattle-Tacoma-Bremerton Area (1982-4= 100) (the "CPI"). In no event will the Port adjust the rent downward as a result of a change in the CPI. If the CPI is not published for any month pertinent

to such calculation, the percentage adjustment shall be calculated with reference to the most recent month thereto for which the CPI has been published. If the CPI is discontinued or revised during the lease term, the Port, at its sole option may use such other government index or computation with which it is replaced in order to obtain substantially the same results as would be obtained if the CPI had not been discontinued or revised.

4. LATE CHARGES

Lessee hereby acknowledges that late payment by Lessee to the Port of rent, or any other sums due hereunder will cause the Port to incur costs not otherwise contemplated by this lease. Accordingly, if any installment of rent or any other sum due from Lessee shall not be received by the Port within ten (10) days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay the Port a late charge equal to 5% of such overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs the Port will incur by reason of late payment by Lessee. Acceptance of such late charge by the Port shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent the Port from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable in this lease or otherwise, whether or not collected, for three (3) installments of rent in any 12-month period, then rent shall automatically become due and payable quarterly in advance, rather than monthly, notwithstanding paragraph 3 or any other provision of this lease to the contrary. In addition to the late charges provided for in this paragraph, interest shall accrue on rent, or any other sums due hereunder, at the rate of 18% per annum or the maximum rate provided by law, whichever is less, from the date due until paid.

5. SECURITY

- a. Security. Lessee shall, upon execution of this lease, obtain and deliver to the Port a good and sufficient corporate surety company bond, irrevocable stand-by letter of credit, cash deposit or other security in an amount equal to three (3) months' rent (hereinafter referred to as "Security"), to secure Lessee's full performance of this lease, including the payment of all fees and other amounts now or hereafter payable to the Port hereunder. The amount, form, provisions and nature of the Security, and the identity of the surety or other obligor thereunder, shall at all times be subject to the Port's approval. The Security shall remain in place at all times throughout the full term of this lease and throughout any holdover period. If the Security is in a form that periodically requires renewal, Lessee must renew the Security not less than forty-five (45) days before the Security is scheduled to expire. No interest shall be paid on the Security and the Port shall not be required to keep the Security separate from its other accounts. No trust relationship is created with respect to the Security.
- b. Return of Security. The Security is a part of the consideration for execution of this lease. If Lessee shall have fully performed all terms and conditions of this lease, any cash deposit security shall be paid to Lessee within thirty (30) days following the termination (or expiration) date without interest; otherwise the Port shall, in addition to any and all other rights and remedies available under this lease or at law or equity, retain title thereto.
- c. Application of Security. The Port may apply all or part of the Security to unpaid rent or any other unpaid sum due hereunder, or to cure other defaults of Lessee. If the Port uses any part of the Security, Lessee shall restore the Security to its then-currently required amount within fifteen (15) days after the receipt of the Port's written request to do so. The retention or application of such Security by the Port pursuant to this subparagraph does not constitute a limitation on or waiver of the Port's right to seek further remedy under law or equity.

6. USE OF PREMISES

- a. Lessee shall use the Premises for storage of concrete aggregate materials and mechanical spare parts and shall not use them for any other purpose without the written consent of the Port. Lessee may store coal, clay, gypsum, shale and iron scale on the Premises, provided Lessee has obtained the necessary permits and approvals for such storage. Lessee shall be solely responsible for obtaining such permits and approvals. Lessee shall use the entire Premises for the conduct of said business in a first-class manner continuously during the entire term of this lease, with the exception of temporary closures for such periods as may reasonably be

necessary for repairs or redecorating or for reasons beyond Lessee's reasonable control. Lessee agrees that it will not disturb the Port or any other tenant of the Port by making or permitting any disturbance or any unusual noise, vibration or other condition on or in the Premises. Lessee shall comply with any and all signs affixed by the Port in the Premises as of the commencement of the lease term relative to maximum floor loadings.

- b. Lessee shall not use the Premises for storage of petroleum products, concrete additives, or dry bulk cement.

7. UTILITIES

Lessee shall be liable for, and shall pay throughout the term of this lease, all charges for all utility services furnished to the Premises, including, but not limited to, light, heat, electricity, security, gas, water, sewerage, garbage disposal, and janitorial services. In the event that the Premises are part of a building or part of any larger premises to which any utility services are furnished on a consolidated or joint basis, Lessee agrees to pay to the Port Lessee's pro rata share of the cost of any such utility services. Lessee's pro rata share of any such services may be computed by the Port on any reasonable basis, and separate metering or other exact segregation of cost shall not be required.

8. ACCEPTANCE OF PREMISES

Lessee has examined the Premises, accepts them in their present condition, and agrees to make any changes in the Premises necessary to conform to federal, state and local law applicable to Lessee's use of the Premises.

9. MAINTENANCE AND REPAIR

At the expiration or sooner termination of this lease, Lessee shall return the Premises to the Port in the same condition in which received (or, if altered by Lessee with the Port's consent, then the Premises shall be returned in such altered condition), reasonable wear and tear and damage by fire or other unavoidable casualty excepted. Lessee shall, at its own expense, at all times keep the Premises and the adjoining roadways and sidewalks, neat, clean and in a safe and sanitary condition, free from infestation of pests and conditions which might result in harborage for, or infestation of, pests. (The word "pests," as used herein, shall include, without limitation, rodents, insects, and birds in numbers to the extent that a nuisance is created.) Lessee shall also keep the Premises clean and presentable, and shall maintain and keep the Premises in a good state of repair, and shall commit no waste of any kind, and, without limiting the generalities thereof, shall keep the mechanical and electrical systems and all drains clean and in a good state of repair, and shall protect the sprinkler system and all pipes and drains so that they will not freeze or become clogged.

10. ALTERATIONS AND IMPROVEMENTS

- a. Lessee shall make no alterations or improvements to or upon the Premises or install any fixtures (other than trade fixtures which can be removed without injury to the Premises) without first obtaining written approval from the Chief Executive Officer of the Port and subject to any and all conditions in such approval provided such alterations are not inconsistent with the uses described in paragraph 6. In the event any alterations or improvements shall be made or fixtures (other than trade fixtures which can be removed without injury to the Premises) installed by Lessee, except for the items listed on Exhibit "B," they shall at once become a part of the realty and become the property of the Port. Movable furniture and trade fixtures which are removable without injury to the Premises shall be and remain the property of Lessee. Lessee shall retain ownership of any conveyor belt system on the Premises and agrees to remove it from the Premises upon termination of this Lease.
- b. The parties acknowledge that Lessee has installed drainage control improvements to the Premises to ensure that sediment from the stockpile site: (1) does not reach the Duwamish River, (2) does not enter any existing drainage system on adjacent Port property, and (3) does not enter public right-of-way areas or public drainage systems; provided however, Lessee may proceed to use the existing drainage system on Port property except as provided in "(2)" above. It is acknowledged that such drainage control improvements may direct flow from the Premises into the drainage system on Lessee's adjacent plant property. Upon the termination of this

Lease, Lessee shall be entitled at its expense to reconfigure any such improvements so that runoff from the Premises no longer is directed into Lessee's drainage system.

11. INSPECTION, "FOR RENT" SIGNS

The Port reserves the right to inspect the Premises at any and all reasonable times throughout the term of this lease. Provided, that the Port shall not interfere unduly with Lessee's operations. The right of inspection reserved to the Port hereunder shall impose no obligation on the Port to make inspections to ascertain the condition of the Premises, and shall impose no liability upon the Port for failure to make such inspections. The Port shall have the right to place and maintain "For Rent" signs in conspicuous places on the Premises for thirty (30) days prior to the expiration or sooner termination of this lease.

12. OUTSIDE AREAS AND ROOF

The use of the outside area of the walls (other than the front of the Premises) and the roof of the building in which the Premises are located is reserved to the Port, which shall have the right to utilize the same for any purpose, including the maintenance of signs.

13. POSSESSION

If the Port shall be unable for any reason to deliver possession of the Premises, or any portion thereof, at the time of the commencement of the term of this lease, the Port shall not be liable for any damage caused thereby to Lessee, nor shall this lease thereby become void or voidable, nor shall the term specified herein be in any way extended, but in such event Lessee shall not be liable for any rent until such time as the Port can deliver possession. If Lessee shall, in the interim, take possession of any portion of the Premises, Lessee shall pay as rent the full rent specified herein reduced pro rata for the portion of the Premises not available for possession by Lessee. If the Port shall be unable to deliver possession of the Premises at the commencement of the term of this lease, Lessee shall have the option to terminate this lease by at least thirty (30) days' written notice, unless the Port shall deliver possession of the Premises prior to the effective date of termination specified in such notice. If Lessee shall, with the Port's consent, take possession of all or any part of the Premises prior to the commencement of the term of this lease, all of the terms and conditions of this lease shall immediately become applicable, with the exception that Lessee shall not be obligated to pay any rent for the period prior to the commencement of the term of this lease unless otherwise mutually agreed.

14. DAMAGE OR DESTRUCTION

- a. Should the Premises or the buildings or structures of which the Premises are a part be damaged by fire or other casualty and if the damage is repairable within four (4) weeks from the date of the occurrence (with the repair work and the preparations therefor to be done during regular working hours on regular work days), the Premises shall be repaired with due diligence by the Port, and in the meantime the monthly rent shall be abated in the same proportion that the untenantable portion of the Premises bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs.
- b. Should the Premises or any buildings or structures of which the Premises are a part be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the damage cannot be repaired within four (4) weeks of the occurrence, the Port shall have the option to terminate this lease on thirty (30) days' notice, effective as of any date not more than sixty (60) days after the occurrence. In the event that this paragraph shall become applicable, the Port shall advise Lessee within thirty (30) days after the happening of any such damage whether the Port has elected to continue the lease in effect or to terminate it. If the Port shall elect to continue this lease in effect, it shall commence and prosecute with due diligence any work necessary to restore or repair the Premises. If the Port shall fail to notify Lessee of its election within said thirty (30) day period, the Port shall be deemed to have elected to terminate this lease, and the lease shall automatically terminate sixty (60) days after the occurrence of the damage. For the period from the occurrence of any damage to the Premises to the date of completion of the repairs to the Premises (or to the date of termination of the lease if the Port shall elect not to restore the Premises), the monthly rent shall be abated in the same proportion as the untenantable portion of the Premises bears to the whole thereof.

15. INDEMNIFICATION

The Port, its employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Lessee or by others, including but not limited to all persons directly or indirectly employed by the Lessee, or any agents, contractors, subcontractors, licensees, or invitees of Lessee, as a result of any condition (including existing or future defects in the Premises) or occurrence (including failure or interruption of utility service) whatsoever related in any way to the Premises and the areas adjacent thereto, or related in any way to Lessee's use or occupancy of the Premises and of areas adjacent thereto. Lessee agrees to defend and to hold and save the Port harmless from all liability or expenses (including attorneys' fees, costs, and all expenses of litigation) in connection with any such items of actual or alleged injury or damage, except when such injury or damage is caused by the sole negligence of the Port. The Lessee expressly agrees that its duty to defend and indemnify the Port includes negligent acts which are concurrent, contributory, or both by the Port, resulting in said damage or injury. However to the extent this lease is construed to be subject to RCW 4.24.115, and where the injury or damage arises from the concurrent negligence of the Port and Lessee, Lessee's indemnity will only extend to its negligence.

16. LIABILITY INSURANCE

- a. Lessee shall, at its sole cost and expense, obtain and keep in force during the term of this lease a commercial general liability policy of insurance protecting Lessee and the Port, as an additional insured using ISO form 2026 or equivalent, against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the tenancy, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$2,000,000 per occurrence, and in such increased amounts as the Port may from time to time specify. The limits of said insurance required by this lease or as carried by Lessee shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder.
- b. All insurance to be carried by Lessee shall be (i) primary to and not contributory with any similar insurance carried by the Port, whose insurance shall be considered excess insurance only, and (ii) shall not be cancelable or subject to modification except after forty-five (45) days' prior written notice to the Port. Lessee shall, at least thirty (30) days prior to the expiration of such policies, furnish the Port with evidence of renewals or "insurance binders" evidencing renewal thereof, or the Port may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to the Port upon demand. Lessee shall cause to be delivered to the Port certified copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with the insured clauses and/or endorsements as required by this lease. Lessee shall not do or permit anything to be done that may invalidate the insurance policies referred to in this Article.

17. WAIVER OF SUBROGATION

The Port and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under the respective fire insurance contracts, including any extended coverage endorsements thereto: Provided, that this paragraph 17 shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of Port or Lessee.

18. INCREASE IN COST OF INSURANCE

Lessee shall not use the Premises in such a manner as to increase the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If it nevertheless does so, then, at the option of the Port, the full amount of any resulting increase in premiums paid by the Port with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the term of this lease, may be added to the amount of rent hereinabove specified and shall be paid by Lessee to the Port upon the monthly rental day next thereafter occurring.

19. TAXES

Lessee shall be liable for, and shall pay throughout the term of this lease, all license fees and all taxes payable for, or on account of, the activities conducted on the Premises and all taxes on the property of Lessee on the Premises and any taxes on the Premises and/or on the leasehold interest created by this lease and/or any taxes levied in lieu of a tax on said leasehold interest and/or any taxes levied on, or measured by, the rentals payable hereunder, whether imposed on Lessee or on the Port. With respect to any such taxes payable by the Port which are on or measured by the rent payments hereunder, Lessee shall pay to the Port with each rent payment an amount equal to the tax on, or measured by, that particular payment. All other tax amounts for which the Port is or will be entitled to reimbursement from Lessee shall be payable by Lessee to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided, that Lessee shall be entitled to a minimum of ten (10) days' written notice of the amounts payable by it.

20. COMPLIANCE WITH PORT REGULATIONS AND WITH ALL LAWS

Lessee agrees to comply with all applicable rules and regulations of the Port pertaining to the building or other realty of which the Premises are a part now in existence or hereafter promulgated for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public. Lessee further agrees to comply with all applicable federal, state, and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters. Lessee's failure to comply with any such laws, ordinances, and regulations may result in the Port exercising its rights as described in this lease, including declaring a default and exercising its remedies, even in the absence of any action by a third party claiming regulatory jurisdiction relating to Lessee's failure to comply. Any fees for any inspection of the Premises during or for the lease term by a federal, state or municipal officer and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.

21. ASSIGNMENT OR SUBLEASE

- a. Lessee shall not assign or transfer this lease or any interest therein nor sublet the whole or any part of the Premises, nor shall this lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise without the written consent of the Port first had and obtained. If Lessee is a corporation, Lessee further agrees that if at any time during the term of this lease more than one-half (1/2) of the outstanding shares of any class of stock of Lessee corporation shall belong to any stockholders other than those who own more than one-half (1/2) of the outstanding shares of that class of stock at the time of the execution of this lease or to members of their immediate families, such change in the ownership of the stock of Lessee shall be deemed an assignment of this lease within the meaning of this paragraph.
- b. Pursuant to subparagraph 21 a. above, the Port hereby consents to Lessee's subleasing the Premises to Gary Merlino Construction Company, Inc. dba Stoneway Concrete, subject to the following:
 - (1) Nothing in this consent or in the terms, covenants and conditions of the Sublease amends or modifies in any respect the terms, covenants and conditions of the Basic Lease. Any rights or privileges granted in the Sublease to Lessee that are greater than or are in conflict or inconsistent with the terms, covenants and conditions of the Basic Lease do not apply to or impose any obligations or duties upon the Port. In addition, nothing in this consent releases Lessee in any respect from its obligations and duties under the Basic Lease, including the application of those obligations and duties to the Premises covered by the Sublease. Except for the rental obligations, the Sublessee must perform such obligations and duties to the extent applicable to the Premises covered by the Sublease.
 - (2) If the Basic Lease terminates for any reason prior to the termination date of the Sublease, the Port may require Lessee and Sublessee to vacate the Premises as of the date of such early termination, and the Port shall have no obligation to compensate Lessee or Sublessee for any loss or damage which might result from any such early termination and vacation of the Premises.

- (3) The Sublessee must name the Port as an additional insured with respect to all insurance coverage required under the terms of the Sublease.
- (4) The parties agree that paragraph 21., ASSIGNMENT OR SUBLEASE, of the Basic Lease remains in full force and effect, and no further assignment or sublease may be made without the prior written consent of the Port and such consent is solely in the Port's discretion. Additionally, neither Lessee nor the Sublessee may assign the Sublease nor shall the Premises under the Sublease be further Sub-Subleased, without the prior written consent of the Port and such consent is solely in the Port's discretion. Subject to the foregoing, the terms and conditions of this consent are binding upon and apply to the successors and assigns of Lessee and the Sublessee.

22. DEFAULTS AND REMEDIES

a. Defaults.

- (1) Time is of the essence of this lease. The occurrence of any one or more of the following events constitutes a default of this lease by Lessee with or without notice from the Port:
- (2) The vacating or abandonment of the Premises by Lessee.
- (3) The failure by Lessee to make any payment of rent, or any other payment required by this lease, when due.
- (4) The failure by Lessee to observe or perform any covenant, condition, or agreement to be observed or performed by Lessee in this lease.
- (5) The discovery by the Port that any financial or background statement provided to the Port by Lessee, any successor, grantee, or assign was materially false.
- (6) The filing by Lessee of a petition in bankruptcy, Lessee being adjudged bankrupt or insolvent by any court, a receiver of the property of Lessee being appointed in any proceeding brought by or against Lessee, Lessee making an assignment for the benefit of creditors, or any proceeding being commenced to foreclose any mortgage or other lien on Lessee's interest in the Premises or on any personal property kept or maintained on the Premises by Lessee.

b. Remedies

- (1) Whenever any default (other than a default under subparagraph 22.a.(6) above, upon which termination of this lease shall, at the Port's option, be effective immediately without further notice) continues unremedied in whole or in part for 30 days after written notice is provided by the Port to Lessee (or for 10 days after written notice in the case of default for failure to pay any rent, or other required payment when due), this lease and all of Lessee's rights under it will automatically terminate if the written notice of default so provides. Upon termination, the Port may reenter the Premises using such force as may be necessary and remove all persons and property from the Premises. The Port will be entitled to recover from Lessee all unpaid rent or other payments and damages incurred because of Lessee's default including, but not limited to, the costs of re-letting, including tenant improvements, necessary renovations or repairs, advertising, leasing commissions, and attorney's fees and costs ("Termination Damages"), together with interest on all Termination Damages at the rate of 18% per annum, or the maximum rate permitted by applicable law, whichever is less, from the date such Termination Damages are incurred by the Port until paid.
- (2) In addition to Termination Damages, and notwithstanding termination and reentry, Lessee's liability for all rent or other charges which, but for termination of the lease, would have become due over the remainder of the lease term ("Future Charges") will not be extinguished and Lessee agrees that the Port will be entitled, upon termination for default, to collect as additional damages, a Rental Deficiency. "Rental Deficiency" means, at the Port's election, either:
 - (a) An amount equal to Future Charges, less the amount of actual rent, if any, which the Port receives during the remainder of the lease term from others

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to whom the Premises may be rented, in which case such Rental Deficiency will be computed and payable at the Port's option either:

- ((1)) In an accelerated lump-sum payment, or
 - ((2)) in monthly installments, in advance, on the first day of each calendar month following termination of the lease and continuing until the date on which the lease term would have expired but for such termination, and any suit or action brought to collect any portion of Rental Deficiency attributable to any particular month or months, shall not in any manner prejudice the Port's right to collect any portion of Rental Deficiency by a similar proceeding; or
- (b) An amount equal to Future Charges less the aggregate fair rental value of the Premises over the remaining lease term, reduced to present worth. In this case, the Rental Deficiency must be paid to the Port in one lump sum, on demand, and will bear interest at a rate of 18% per annum, or the maximum rate permitted by applicable law, whichever is less, until paid. For purposes of this subparagraph, "present worth" is computed by applying a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank in, or closest to, Seattle, Washington.
- (3) If this lease is terminated for default as provided in this lease, the Port shall use reasonable efforts to re-let the Premises in whole or in part, alone or together with other premises, for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the lease term), for such use or uses and, otherwise on such terms and conditions as the Port, in its sole discretion, may determine, but the Port will not be liable for, nor will Lessee's obligations under this lease be diminished by reason for any failure by the Port to re-let the Premises or any failures by the Port to collect any rent due upon such re-letting.
- (4) If upon any reentry permitted under this lease, there remains any personal property upon the Premises, the Port, in its sole discretion, may remove and store the personal property for the account and at the expense of Lessee. In the event the Port chooses to remove and store such property, it shall take reasonable steps to notify Lessee of the Port's action. All risks associated with removal and storage shall be on Lessee. Lessee shall reimburse the Port for all expenses incurred in connection with removal and storage as a condition to regaining possession of the personal property. The Port has the right to sell any property which has been stored for a period of 30 days or more, unless Lessee has tendered reimbursement to the Port for all expenses incurred in removal and storage. The proceeds of sale will be applied first to the costs of sale (including reasonable attorneys fees), second to the payment of storage charges, and third to the payment of any other amounts which may then be due and owing from Lessee to the Port. The balance of sale proceeds, if any, will then be paid to Lessee.
- (5) The Port's action pursuant to this remedies paragraph shall not be construed to limit the Port in the exercise of any other additional right or remedy which may be available to the Port, at law or in equity, by reason of Lessee's default.

23. TERMINATION

In the event that the Port, at its sole discretion, shall require the use of the Premises for a major capital improvement for public or private use in connection with the operation of the business of the Port, or for the use by a Port tenant involved in cargo shipping, then this lease may be terminated by the Port by written notice delivered or mailed by the Port to Lessee not less than one hundred eighty (180) days before the termination date specified in the notice.

24. TERMINATION FOR GOVERNMENT USE

In the event that any federal, state or local government or agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of the Premises or any part thereof, the Port may, at its option, terminate this lease as of the date of such taking, and, if Lessee is not in default under any of the provisions of this lease on said date, any rent prepaid by Lessee shall, to the extent

allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.

25. TERMINATION BECAUSE OF COURT DECREE

In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this lease, then either party hereto may terminate this lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this lease on the effective date of such termination, any rent prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.

26. SIGNS

No signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted on or within the Premises, including the windows and doors thereof, without the approval of the Chief Executive Officer of the Port first had and obtained. At the termination or sooner expiration of this lease, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Lessee shall be removed by Lessee at its own expense, and Lessee shall repair any damage or injury to the Premises and correct any unsightly condition caused by the maintenance and removal of said signs, etc.

27. NONWAIVER

The acceptance of rent by the Port for any period or periods after a default by Lessee hereunder shall not be deemed a waiver of such default unless the Port shall so intend and shall so advise Lessee in writing. No waiver by the Port of any default hereunder by Lessee shall be construed to be or act as a waiver of any subsequent default by Lessee. After any default shall have been timely cured by Lessee, it shall not thereafter be used by the Port as a ground for the commencement of any action under the provisions of paragraph 22 hereof.

28. PROMOTION OF PORT COMMERCE

Lessee agrees that throughout the term of this lease it will, insofar as practicable, promote and aid the movement of passengers and freight through facilities within the territorial limits of the Port. Lessee further agrees that all incoming shipments of commodities that it may be able to control or direct shall be made through facilities within the territorial limits of the Port if there will be no resulting cost or time disadvantage to Lessee.

29. SURRENDER OF PREMISES - ATTORNEYS' FEES

At the expiration or sooner termination of this lease, Lessee shall promptly surrender possession of the Premises to the Port, and shall deliver to the Port all keys that it may have to any and all parts of the Premises. In the event that either party shall be required to bring any action to enforce any of the provisions of this lease, or shall be required to defend any action brought by the other party with respect to this lease, and in the further event that one party shall entirely prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorneys' fees in the trial court and in any appellate courts.

30. HOLDING OVER

If Lessee, with the consent of the Port, holds over after the expiration or sooner termination of this lease, the resulting tenancy will, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. During such month-to-month tenancy, Lessee shall pay to the Port, at the Port's sole discretion, the same rental rate that was in effect immediately prior to the month-to-month tenancy times 150%. Lessee will continue to be bound by all of the additional provisions of this lease insofar as they may be pertinent.

31. ADVANCES BY PORT FOR LESSEE

If Lessee shall fail to do anything required to be done by it under the terms of this lease, except to pay rent, the Port may, at its sole option, do such act or thing on behalf of Lessee, and upon notification to Lessee of the cost thereof to the Port, Lessee shall promptly pay the Port the amount of that cost.

32. LIENS AND ENCUMBRANCES

Lessee shall keep the Premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the said Premises by Lessee. At the Port's request, Lessee shall furnish the Port with written proof of payment of any item which would or might constitute the basis for such a lien on the Premises if not paid.

33. NOTICES

All notices hereunder shall be in writing and shall be delivered personally, by certified or register mail, by facsimile or by recognized overnight courier addressed as follows:

To Port:

Port of Seattle
Attention: Seaport Real Estate Department
P. O. Box 1209
2711 Alaskan Way
Seattle, Washington 98111
Facsimile: (206) 728-3280

For payments only, the following mailing address should be used:

Port of Seattle
P.O. Box 34249-1249
Seattle, Washington 98124-1249

To Lessee:

Ash Grove Cement Company
3801 E. Marginal Way South
Seattle, Washington 98134

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices shall be deemed delivered (i) when personally delivered; (ii) on the third day after mailing when sent by certified or registered mail and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; (iii) on the date transmitted by facsimile, if the facsimile is confirmed received; or (iv) on the first business day after deposit with a recognized overnight courier if deposited in time to permit overnight delivery by such courier as determined by its posted cutoff times for receipt of items for overnight delivery to the recipient.

Payments may be made in the manner provided for notice or may be delivered by regular mail (postage prepaid); provided, payments made by regular mail (postage prepaid) shall be deemed delivered when actually received by the Port.

34. JOINT AND SEVERAL LIABILITY

Each and every party who signs this lease, other than in a representative capacity, as Lessee, shall be jointly and severally liable hereunder.

35. "LESSEE" INCLUDES LESSEES, ETC.

It is understood and agreed that for convenience the word "Lessee" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this lease, regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual lessee or lessees under this agreement.

36. CAPTIONS

The captions in this lease are for convenience only and do not in any way limit or amplify the provisions of this lease.

37. INVALIDITY OF PARTICULAR PROVISIONS

If any term or provision of this lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

38. NONDISCRIMINATION - SERVICES

- a. Lessee agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, sex, age, creed, color or national origin in furnishing, or by refusing to furnish, to such person, or persons, the use of the facility herein provided, including any and all services, privileges, accommodations, and activities provided thereby.
- b. It is agreed that Lessee's noncompliance with the provisions of this clause shall constitute a material breach of this lease. In the event of such noncompliance, the Port may take appropriate action to enforce compliance, may terminate this lease, or may pursue such other remedies as may be provided by law.

39. NONDISCRIMINATION - EMPLOYMENT

Lessee covenants and agrees that in all matters pertaining to the performance of this lease, Lessee shall at all times conduct its business in a manner which assures fair, equal and nondiscriminatory treatment of all persons without respect to race, sex, age, color, creed or national origin and, in particular:

- a. Lessee will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified individuals who are members of racial or other minorities, and
- b. Lessee will comply strictly with all requirements of applicable federal, state and local laws or regulations issued pursuant thereto relating to the establishment of nondiscriminatory requirements in hiring and employment practices and assuring the service of all patrons or customers without discrimination as to any person's race, sex, age, creed, color or national origin.

40. LABOR UNREST

Lessee agrees to join with the Port and use its best efforts in avoiding labor unrest, or in the event of a wildcat strike or other labor difficulty, to use its good offices in negotiating and bringing to a swift and satisfactory conclusion any kind of labor dispute that may affect the interests of the Port.

41. EASEMENTS

- a. The Parties recognize that the Port facilities are continuously being modified to improve the utilities, services and premises used and provided by the Port. The Port, or its agents, shall have the right to enter the Premises of Lessee, and to cross over, construct, move, reconstruct, rearrange, alter, maintain, repair and operate the sewer, water, and drainage lines, and the electrical service, and all other services and facilities required by the Port for its own use. The Port is hereby granted a continuous easement or easements that the Port believes is necessary within the Premises of Lessee, without any additional cost to the Port for the purposes expressed hereinabove. Provided, however, that the Port by virtue of such use, does not substantially deprive Lessee from its beneficial use or occupancy of its leased area for an unreasonable period of time, not to exceed thirty (30) working days, without consent of Lessee.
- b. In the event that the Port permanently deprives Lessee from such beneficial use or occupancy, then an equitable adjustment in rent, or in the cost required to modify its Premises to allow the Lessee to operate its business, will be negotiated and paid by

the Port to Lessee. In the event that such entry by the Port is temporary in nature, then the Port shall reimburse Lessee for the cost required to modify its Premises for the temporary period that Lessee is inconvenienced by such Port entry. The Port will not be responsible to Lessee for any reduced efficiency or loss of business occasioned by such entry.

42. ENVIRONMENTAL STANDARDS

- a. "Law or Regulation" as used herein shall mean any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect. "Hazardous Substances" as used herein shall mean any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant, by any Law or Regulation.
- b. Lessee shall not allow the presence in or about the Premises of any Hazardous Substance in any manner that could be a detriment to the Premises or in violation of any Law or Regulation. Lessee shall not allow any Hazardous Substances to migrate off the Premises, or the release of any Hazardous Substances into adjacent surface waters, soils, underground waters or air. Lessee shall provide the Port with Lessee's USEPA Waste Generator Number, and with copies of all Material Safety Data Sheets (MSDS), Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence Lessee receives from, or provides to, any governmental unit or agency in connection with Lessee's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises.
- c. If Lessee, or the Premises, is in violation of any Law or Regulation concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Lessee shall promptly take such action as is necessary to mitigate and correct the violation. If Lessee does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the Lessee (Lessee hereby appoints the Port as its agent for such purposes) and to take such action as the Port deems necessary to ensure compliance or to mitigate the violation. If the Port has a reasonable belief that Lessee is in violation of any Law or Regulation, or that Lessee's actions or inactions present a threat of violation or a threat of damage to the Premises, the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems necessary. All costs and expenses incurred by the Port in connection with any such actions shall become immediately due and payable by Lessee upon presentation of an invoice therefor.
- d. The Port shall have access to the Premises to conduct an annual environmental inspection. In addition, Lessee shall permit the Port access to the Premises at any time upon reasonable notice for the purpose of conducting environmental testing at the Port's expense. Lessee shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Port's written consent. Lessee shall promptly inform the Port of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to Lessee, and Lessee shall provide copies to the Port.
- e. Prior to vacation of the Premises, in addition to all other requirements under this lease, Lessee shall remove any Hazardous Substances placed on the Premises during the term of this lease or Lessee's possession of the Premises, and shall demonstrate such removal to the Port's satisfaction. This removal and demonstration shall be a condition precedent to the Port's payment of any lease Security to Lessee upon termination or expiration of this lease.
- f. No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the Port shall be entitled to full reimbursement from Lessee whenever the Port incurs any costs resulting from Lessee's use or management of Hazardous Substances on the Premises, including but not limited to, costs of clean-up or other remedial activities, fines or penalties assessed directly against the Port, injuries to third persons or other properties, and loss of revenues resulting from an inability to re-lease or market the property due to its environmental condition (even if such loss of revenue occurs after the expiration or earlier termination of this lease).

- g. In addition to all other indemnities provided in this lease, Lessee agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises, or the migration of any Hazardous Substance from the Premises to other properties or into the surrounding environment, whether (1) made, commenced or incurred during the term of this lease, or (2) made, commenced or incurred after the expiration or termination of this lease if arising out of events occurring during the term of this lease.

43. TERMINAL SECURITY

Lessee will comply at all times with all local, state, and federal laws, rules, and regulations relating to security ("Security Laws") at any Port facility. If the Premises are subject to a government-approved security plan ("Security Plan"), Lessee will fully and promptly comply with the Security Plan. If the Premises are not subject to a Security Plan and if Lessee undertakes any activity or handles any cargo that brings the Premises or surrounding area under the Security Laws, Lessee will be fully liable for all its costs and Port costs associated with complying with the Security Laws for the Premises and surrounding areas. Lessee will provide the Port evidence satisfactory to the Port that the appropriate government authority has approved any Lessee-prepared security plan. Lessee will be liable for any fines or penalties for its failure to comply with the Security Laws or the Security Plan whether assessed against Lessee or the Port.

44. ENTIRE AGREEMENT - AMENDMENTS

This printed lease together with any and all exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modification or amendment of this agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.


On its effective date, this lease cancels that certain lease dated April 26, 2001 by and between the parties for use of premises at Terminal 106West.

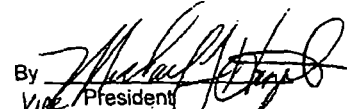
IN WITNESS WHEREOF the parties hereto have signed this lease as
of the day and year first above written.

SIGNATURE FOR
LESSEE IF
INCORPORATED

ATTEST:

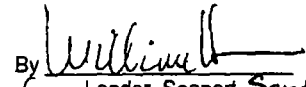
ASH GROVE CEMENT COMPANY

By 
Secretary

By 
Vice President
LESSEE

(CORPORATE SEAL)

PORT OF SEATTLE

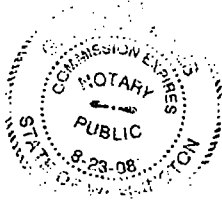
By 
~~for~~ Leader, Seaport Senior
Property Management
LESSOR

Notary to Terminal 106W lease
with Ash Grove Cement Company

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 20th day of March, 2006, before me, the undersigned notary public in and for the State of Washington, duly commissioned, and sworn, personally appeared Michael H. Kriston to me known to be the Senior Property Manager of the PORT OF SEATTLE, a municipal corporation, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute the same.

WITNESS my hand and official seal hereto the day and year in this Certificate first above written.



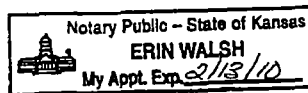
[Signature]
Notary Public in and for the State of
Washington, residing at Seattle
My appointment expires 9-23-08

(ACKNOWLEDGMENT FOR CORPORATE LESSEE)

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

On this 13th day of March, 2006, before me personally appeared Michael Hrizuk and Gary Church, to me known to be the Vice President and the Asst. Secretary, respectively, of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



[Signature]
Notary Public in and for the State of
Kansas, residing at To. Co., KS.
My appointment expires 2/13/2010